THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION Nos.7828 and 7830 of 2000

DATED: 26.07.2007

W.P.No.7828 of 2000
Between:

J.Maraiah and others

.. Petitioner

And

The Principal Secretary to Govt. of A.P.,
I & CAD Department,
Secretariat, Hyderabad
and others.

.. Respondents

W.P.No.7830 of 2000
Between:

M.Hariaya and others

.. Petitioner

And

The Principal Secretary to Govt. of A.P.,
I & CAD Department,
Secretariat, Hyderabad
and others.

.. Respondents

THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION Nos.7828 & 7830 of 2000

COMMON ORDER:

As respondents are similar and the point involved in these writ petitions is one and the same, they are heard and disposed of by this common order.

2. The writ petitions are filed seeking a Writ of Mandamus to declare the action of the respondents in not completing the land acquisition proceedings pursuant to Section 6(1) declarations in both these writ petitions vide GO Rt.No.257 dated 26.02.1998 published by the respondents in the newspaper dated 04.04.1998 and Govt. Memo No.251 dated 15.03.1997 published in newspaper dated 10.04.1997 respectively and passing the award by determining the compensation as per section 23 of the Land Acquisition Act, 1894 (for short, 'L.A.Act') and paying the compensation to the petitioners including 80% of the compensation as per section 17 (3-A) of the L.A.Act, 1894 as totally illegal and arbitrary, and consequently, direct the respondents to complete the award proceedings to determine the compensation as per section 23 of the L.A.Act, 1894 and pay the same with statutory benefits forthwith.

3. It is the case of petitioners in both these writ petitions that the Government acquired their lands to an extent of Ac.23.21 guntas and Ac.06.01 gunta respectively pursuant to the Land Acquisition notification issued by the first respondent through Govt. Memo No.257

dated 26.02.1998 under Section 6 of the L.A.Act published in newspaper 04.04.1998 and Govt. Memo No.251 dated 15.03.1997 under Section 6 of the L.A.Act published in newspaper dated 10.04.1997 respectively for formation of CADA Road and advance possession was also taken. Their grievance is that though they made several representations to the Government for payment of compensation, it did not pay the compensation, and hence, these writ petitions are filed.

4. In the counter affidavit filed on behalf of respondents, they have stated that the distribution of compensation to the petitioners under the provisions of Nagarjuna Sagar Project (Acquisition of Land) Act 32 of 1956 (for short, 'Nagarjuna Sagar Act') is valid, since their lands were acquired for the purpose of formation of CADA road. Further, the respondents contend that the compensation was not paid to the petitioners since the determination of compensation under the Nagarjuna Sagar Act is pending before the Hon'ble Supreme Court in the batch of cases and the petitioners are only entitled to compensation under the provisions of the Nagarjuna Sagar Act and not under the L.A. Act.

5. Heard learned counsel for the parties.

6. No doubt, in the counter affidavit filed on behalf of respondents, they have stated that the distribution of compensation under the provisions of Nagarjuna Sagar Act is valid.

7. The parliament in its wisdom made an amendment to the Constitution of India, and thus Article 31-A of the Constitution was inserted by the Constitution (First Amendment) Act, 1951. According to

which no law providing for the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights etc., shall be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by Article 14 or 19. According to the second proviso to the said Article where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto unless the law relating to acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof.

8. When a case with similar facts came up for a debate, a Division Bench of this Court in **K. RANGAIAH v. STATE**[1], had clearly stated that applying the provisions of the Nagarjuna Sagar Act for those acquisitions made after 20-06-1964 is ultra vires of Article 31-A of the Constitution of India. In paragraph 7 of the said judgment, it is held as follows--

> 7. It was however sought to be argued by the learned Advocate-General that the second proviso which was introduced by the Constitution (7th amendment) Act and which came into effect on 20-06-1964 cannot affect the Nagarjunasagar Act of 1956. He drew our attention in this connection to the fact that both the Constitution (First Amendment) Act which introduced Art.31-A and the Constitution (Fourth Amendment) Act which imposes certain amendment to Art.31-A expressly provided that they will have retrospective effect; whereas no such provision was made by the Constitution (Seventh amendment) Act. We are unable to

> accept that contention of the learned Advocate-General. As has been held by the Supreme Court the second proviso introduced by the Constitution (First Amendment) Act creates a fundamental right in favour of persons who own lands within the ceiling limit and are cultivating them personally. The Constitution categorically states that such lands cannot be acquired except on payment of the market value on the date of the notification. Any law providing for payment of market value of les than that amount or any acquisition made under such law would infringe the fundamental right guaranteed to the owners of the land under Art.31-A. Therefore, there can be no doubt that law which infringes a fundamental right even though passed before the amendment of the Constitution under which the fundamental right is conferred, would thereafter have no effect. It is true that the Constitution (Seventh Amendment) Act is not retrospective. It cannot therefore affect any acquisition made prior to the date when it came into force that is, prior to 20-06-1964. But any acquisition made subsequent to that date must conform to the requirements of Art.31-A as amended. If it does not, it would infringe the fundamental right guaranteed to the owner of the land under Art.31-A second proviso and would be void. We have therefore no hesitation in holding that S.23(1) of the Land Acquisition Act as amended by the Nagarjunasagar Act is ultra vires Art.31-A in so far as it applies to acquisition of lands made after 20-06-1964 within the ceiling limit and under personal cultivation of a person.

9. Looking at the cases on hand, this Court is of the view that the application of the provisions of Nagarjuna Sagar Act for determination of compensation can definitely be said to be violative of Article 31-A of the Constitution of India. Evidently, the first respondent has taken up land acquisition proceedings and published Section 4(1) notification by dispensing with Section 5 (A) inquiry and also published section 6 declaration by its notifications in the newspaper dated 04.04.1998 and 10.04.1997 respectively in both these cases and thereafter compensation was not paid to the petitioners, since the determination of compensation under the Nagarjuna Sagar Act is pending before the

Hon'ble Supreme Court in the batch of cases. It amply makes clear that even the Government is not certain as to whether the petitioners are entitled for compensation under the Nagarjuna Sagar Act or under the provisions of the Land Acquisition Act. Having regard to the fact that the provisions of Nagarjuna Sagar Act have no application for those acquisitions that have taken place prior to 20.06.1964 and as Section 4 (1) notifications in the instant cases were published as early as in the year 1997 and 1998 respectively, this Court is of the view that petitioners are entitled for compensation under the provisions of the Land Acquisition Act.

11. Accordingly, these writ petitions are allowed and the respondents herein are directed to complete the proceedings under the provisions of the Land Acquisition Act, 1894 and accordingly pass the award and pay the compensation to the petitioners in terms of the provisions of the L.A.Act only.

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(GOPALA KRISHNA TAMADA,J)

Dt. 26.07.2007
v v

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[1] AIR 1980 AP 165